United Nations CCPR/C/TJK/Q/3

International Covenant on Civil and Political Rights

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Human Rights Committee

List of issues in relation to the third periodic report of Tajikistan*, **

Constitutional and legal framework in which the Covenant is implemented (art. 2)

1. Please provide information on: (a) examples of cases in which the provisions of the Covenant have been invoked or referred to in national courts; (b) specific training on the Covenant for judges, lawyers and prosecutors; and (c) procedures in place for the preparation of periodic reports and the implementation of the Committee's concluding observations and Views under the first Optional Protocol. Please report on the measures taken to ensure full compliance with the Views adopted in relation to the State party in *Nazriev* (CCPR/C/86/D/1044/2002), *Dunaev* (CCPR/C/95/D/1195/2003), *Iskandarov* (CCPR/C/101/D/1499/2006) and *Boboev* (CCPR/C/120/D/2173/2012).

2. With reference to the previous concluding observations (para. 5) and the information provided in the State party's report (CCPR/C/TJK/3, paras. 16–19), please report on the progress made in securing the full compliance of the Office of the Commissioner for Human Rights with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including as regards its independence, the transparent and participatory selection process of staff, interaction with international human rights bodies and the provision of resources necessary to fulfil its mandate effectively.

Anti-corruption measures (arts. 2 and 25)

3. Please respond to reports that corruption, including bribe-seeking by public officials, remains widespread; report on the measures taken to combat corruption effectively and the impact thereof; and clarify inter alia whether steps have been taken to fully criminalize corruption in accordance with international standards and to strengthen legal and institutional capacity to ensure the effective investigation and prosecution of complex and high-level corruption cases.

States of emergency (art. 4)

4. Please provide information on the compliance of the amended State of Emergency Act, which, inter alia, authorizes the blocking of mobile communication services and access to the Internet without a court order, with article 4 of the Covenant. Please also clarify whether derogations from non-derogable provisions of the Covenant during states of emergency are explicitly prohibited.

* Adopted by the Committee at its 124th session (8 October–2 November 2018).

** Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee's previous concluding observations (CCPR/C/TJK/CO/2).

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Counter-terrorism and anti-extremism measures (arts. 4, 9, 14, 17–19 and 21–22)

5. Please (a) report on measures taken to amend the broad and vague definitions of terrorism in the Counter-Terrorism Act (1999) and of extremism in the Anti-Extremism Act (2003); (b) provide information on the interpretation and application in practice of provisions criminalizing the public justification of terrorist and extremist activity (amendments to the Criminal Code adopted on 14 November 2016); (c) explain how the wide powers granted to security services to block access to the Internet and mobile communication in connection with counter-terrorism operations (amendments to the Counter-Terrorism Act adopted in 2015) meet the necessity and proportionality requirements, and outline the safeguards against arbitrariness in the application of such measures; and (d) respond to reports that counter-terrorism and anti-extremism legislation is being misused to supress the legitimate exercise of freedoms of religion and expression, including political dissent.

Non-discrimination (arts. 2 and 26)

6. Please clarify whether national legislation, including the Constitution, explicitly prohibits discrimination on all the grounds prohibited under the Covenant, including colour, opinion, birth, sexual orientation, gender identity and other status, and report on any plans to adopt comprehensive anti-discrimination legislation that, inter alia, addresses discrimination in the private sphere; prohibits all direct, indirect and multiple forms of discrimination; contains a comprehensive list of prohibited grounds for discrimination, in accordance with the Covenant; and provides for access to effective remedies in judicial and administrative proceedings for victims of discrimination.

7. Please respond to the following allegations, and report on the measures taken to address the reported violations effectively: (a) lesbian, gay, bisexual and transgender individuals face discrimination, violence and harassment, are targeted by law enforcement officials for amoral behaviour and crimes against morality, are forcibly registered on lists of lesbian, gay, bisexual and transgender persons and are subjected to arbitrary arrest, detention and extortion; and (b) the Ministry of Internal Affairs and the Office of the Prosecutor General created, in October 2017, a register of 367 individuals suspected of being lesbian, gay, bisexual or transgender following investigative operations reportedly aimed at protecting them and at preventing the transmission of sexually transmitted infections, including HIV/AIDS.

Equality between men and women and gender-based violence (arts. 2–3, 7 and 26)

8. Please report on the measures taken, and the progress achieved, in relation to: (a) increasing the representation of women in political and public life, including in judicial, legislative and executive bodies, especially in decision-making positions; (b) addressing gender-based violence effectively, including domestic and sexual violence; and (c) combating the practice of polygamy.

Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 6–7, 9–10 and 14)

9. With reference to the previous concluding observations (para. 8) and the information provided in the State party's report (CCPR/C/TJK/3, paras. 40–41), please report on the progress made towards the abolition of the death penalty de jure and the accession to, or ratification of, the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. Pending the abolition of the death penalty, please clarify whether the death penalty can only be imposed for the most serious crimes, that is, only for crimes of extreme gravity involving intentional killing, and whether the death penalty is an automatic and mandatory sentence for certain crimes.

10. With reference to the previous concluding observations (para. 10) and the State party's report (CCPR/C/TJK/3, para. 45), please provide further information on the investigation into the killing and wounding of civilians during the security operation in Khorugh in July 2012, including concrete information on its outcome, namely, the

prosecutions initiated and the ensuing convictions, the sentences imposed on the perpetrators and the compensation awarded to the victims or their families.

11. Please respond to the following allegations, and report on the measures taken to address them effectively: (a) torture or ill-treatment of persons deprived of their liberty, particularly for the purposes of extracting confessions, other self-incriminating evidence and money, remains widespread; (b) persons detained on reportedly politically motivated charges, such as members of religious movements, human rights lawyers/defenders and political opponents, are at particular risk of such treatment; (c) courts routinely fail to exclude evidence gathered through torture despite such evidence being inadmissible under the law; and (d) lack of a genuinely independent mechanism to investigate all allegations of torture or ill-treatment, the low rate of criminal investigations, prosecutions and convictions for torture and ill-treatment and the possibility to terminate investigations on such grounds as part of reconciliation with the victim. Please respond to concerns that the penalties for torture, which also include disciplinary sanctions and fines, are not commensurate with the seriousness of the crime. Please also clarify whether: (a) victims of torture are afforded full reparation both in law and in practice, including rehabilitation, adequate compensation and the possibility of seeking civil remedies independent of criminal proceedings; (b) persons who have been convicted of torture may benefit from amnesties and pardon; and (c) the State party still maintains a statute of limitations for the crime of torture. Please provide information on: (a) the number of cases of torture and ill-treatment reported annually since 2013, the subsequent investigations and prosecutions initiated and the criminal convictions secured, the types of sanctions imposed and the reparations granted to victims; (b) the number of cases in which courts initiated investigations into allegations of forced confessions and the outcomes thereof.

Liberty and security of person and treatment of persons deprived of their liberty (arts. 6–7 and 9–10)

12. With reference to the previous concluding observations (paras. 16–17), please report on the implementation in practice of the amendments of 30 March 2016 to the Code of Criminal Procedure and the Act on Procedures and Conditions for the Custody of Suspects, Accused Persons and Defendants, and respond to the following allegations indicating the measures taken to address them: (a) fundamental procedural safeguards, including access to counsel, are often not provided in practice from the very outset of the deprivation of liberty, and the right to counsel is frequently denied especially in politically sensitive cases; (b) lack of an official central register at all stages of detention; (c) extended pretrial detention; and (d) prolonged detention without charges of persons suspected of crimes related to national security or extremism. Please clarify whether judicial decisions ordering pretrial detention are based on an individualized determination of all the circumstances or solely on the gravity of the alleged crime, and provide information on non-custodial alternative measures to pretrial detention and statistics on their application in practice. Please also report on the progress made in establishing an independent mechanism for the inspection of all places of deprivation of liberty, and in granting access to detention facilities to non-governmental organizations outside the joint monitoring with the Commissioner for Human Rights and to the relevant international humanitarian organizations, such as the International Committee of the Red Cross.

13. In view of the previous concluding observations (para. 9), please respond to reports of deaths in custody, including due to ill-treatment, the high infection rates of tuberculosis and HIV/AIDS among inmates and the lack of adequate medical care, and their ineffective investigation. Please provide information on the number of deaths in custody since 2013 (with an indication of the cause of death) and on the investigation and prosecution of those responsible, including information on the outcome of investigations into the deaths of Kurbon Mannonov, Nozimdshon Tashirpov, Ismonboy Boboev and Tolibjon Dustov. Please also report on the measures taken to address overcrowding and improve the material conditions of detention and access to appropriate medical care, and respond to reports that prisoners sentenced to life imprisonment are held in particularly harsh conditions in pretrial facilities, including isolation in small, cramped and poorly ventilated cells for most of the day, excessive use of means of restraint, physical abuse, prolonged solitary confinement, denial of access to lawyers and limited contact with relatives and out-of-cell activities.

Freedom of movement (art. 12)

14. Please explain how the following restrictions on the freedom of movement are compatible with the State party's obligations under the Covenant: (a) the requirement of advance approval for students, teachers and professors of educational institutions before travelling abroad introduced by the decree of 28 February 2018 of the Ministry of Education and Science; and (b) arbitrary travel bans reportedly imposed on family members of opposition activists abroad in retaliation for their relatives' criticism of the Government.

Treatment of aliens, including refugees and asylum seekers (arts. 7, 9, 12–13 and 24)

15. Please report on the measures taken to prevent refoulement and to ensure effective access to fair and efficient asylum procedures. Please comment on the compliance with the Covenant of presidential resolutions Nos. 325 and 328 prohibiting officially recognized asylum seekers and refugees from living in Dushanbe and other urban areas listed in the resolutions and providing for penalties for non-compliance, such as rejection of registration of asylum claims, revocation of refugee status, administrative penalties and deportation. Please report on: (a) the enforcement of article 6 (4) of the Refugees Act, which exempts asylum seekers from detention and criminal responsibility for irregular entry, and on any plans to extend the exemption of criminal responsibility for illegal border crossings to all asylum seekers and not only to those who present an asylum claim based on political grounds; (b) the steps taken to ensure that detained persons are afforded procedural guarantees, including information on the right to seek asylum, and interpretation and legal advice services; (c) the measures taken to ensure birth registration for all children born on the territory of the State party, regardless of the parents' lack of valid identity documents or their unclear legal status; and (d) the status of the draft amnesty law temporarily waiving the administrative penalties and deportation for illegal stays of stateless persons and persons with undetermined nationalities.

Right to a fair trial and independence of the judiciary (art. 14)

16. In connection with the previous concluding observations (para. 18), please report on: (a) the impact of the Judicial Reform Programme for the period between 2015 and 2017 and of the constitutional amendments of 22 May 2016 on guaranteeing, both in law and in practice, the full independence, competence and tenure of judges, and provide information on the current procedures and criteria for the selection, appointment, suspension and removal of judges; (b) the steps to eradicate corruption in the judiciary and to ensure adequate remuneration for judges; (c) the measures taken to reduce the excessive powers of the Office of the Prosecutor General; and (d) the progress achieved in providing free and accessible legal assistance to indigent persons. Please also respond to persistent reports of harassment, intimidation and pressure on lawyers representing defendants in politically sensitive cases or cases related to national security and counter-terrorism, including harassment of their families and colleagues, arbitrary arrest and detention prosecution on national security-related or politically motivated charges and often conviction with long prison sentences following unfair trials, such as in the case of human rights lawyers Buzurgmekhr Yorov, Nuriddin Makhkamov, Shukhrat Kudratov, Jamshed Yorov and Muazzamakhon Kadirova.

17. Please respond to allegations of: (a) a failure to ensure equality of arms between the defence and prosecution and frequent violation of the presumption of innocence due to a reliance on self-incriminating statements obtained through torture; and (b) unfair trials, behind closed doors, in cases reported to be politically motivated, including in the case of the leaders of the Islamic Renaissance Party of Tajikistan. Please also respond to concerns that the amendments introduced in November 2015 to the Advokatura and Advocates' Activities Act of March 2015 (a) undermined the independence of the legal profession owing to the affiliation of the newly instituted Qualifying Commission, which is mandated with the licensing of lawyers, with the Ministry of Justice, to the additional qualification criteria for entry to the legal profession and to the requirement that all lawyers pass the new qualification examinations carried out by the said Commission; and (b) brought about a drastic reduction in the number of licensed lawyers in the country, which significantly affects the effective access to justice and to independent legal assistance in practice. Please

clarify whether the State party has acted upon the recommendation of the Committee to remove the jurisdiction of military courts over civilians (para. 19).

Right to privacy and family life (art. 17)

18. Please report on the compatibility of the following regulations with article 17 of the Covenant, indicating, inter alia, the legal safeguards in place against arbitrary interference with the privacy of individuals and their respect in practice: (a) the amendments to the Operative and Search Activity Act adopted in July 2017, giving law enforcement bodies the right to legally monitor the online behaviour of individuals by accessing data on their online activities and texting; and (b) presidential decree No. 765 of November 2016, establishing a Single Communications Switching Centre that allows complete State control over all domestic communications, allegedly without legal safeguards.

Freedom of conscience and religious belief (arts. 2, 18 and 26)

19. In connection with the previous concluding observations (para. 20), please report on the measures taken to repeal the disproportionate restrictions imposed on the exercise of freedom of religion, notably by the Freedom of Conscience and Religious Associations Act (2009) and the Act on Responsibility of Parents for the Upbringing of Children (2011), such as: (a) the strict and compulsory registration of religious organizations and criminalization of unregistered religious activities; (b) restrictions on places of worship; (c) restrictions on access to religious education and the requirement of State permission for receiving religious education abroad; (d) the prohibition of entering a mosque for those under 18 years of age; (e) State interference with the appointment of imams and the content of their sermons; and (f) State control over the content, publication and importation of religious materials. Please also respond to reports of: (a) denial of re-registration of Jehovah's Witnesses and harassment of its members by law enforcement officers for practising religion as an unregistered organization; (b) persecution of the Christian minority groups; (c) surveillance of mosques and harassment and intimidation of men wearing long beards, including forcible shaving of beards; and (d) orders given by the police and local officials to more than 8,000 women in August 2017 to remove their hijabs, and brief detention and forcible removal of the hijab in some cases. Please also comment on concerns about the amendments introduced in August 2017 to the Act on Regulating Traditions, Celebrations and Rituals, requiring, inter alia, the wearing of traditional dress at cultural celebrations or ceremonies, which are reportedly aimed at dissuading women from wearing the hijab, and about the guidelines issued by the Committee for Religious Affairs in September 2017, regulating conduct during funerals.

20. Please report on the status of draft amendments to the Universal Military Obligations and Military Service Act aimed at introducing alternative military service (CCPR/C/TJK/3, para. 91) and on the progress made in implementing the Committee's previous recommendation (para. 21) on ensuring the recognition of the right to conscientious objection to compulsory military service.

Freedom of expression and peaceful assembly (arts. 19 and 21)

21. In connection with the previous concluding observations (para. 22), please respond to consistent reports of arbitrary restrictions on the freedom of expression in law and in practice, and explain how regulations and practices such as the following are compatible with the State party's obligations under article 19 of the Covenant: (a) criminalization of insult or libel against the President/Leader of the Nation (art. 137 of the Criminal Code) and insult against other State officials (art. 330 of the Criminal Code); (b) State control over the media resulting in self-censorship by media outlets and journalists; (c) regulations of February 2017 requiring all new periodicals and printing houses to register with the State Committee for National Security; (d) the use of registration requirements to close down media outlets critical of the Government; (e) periodical blocking of media platforms, such as the British Broadcasting Corporation (BBC), the cable News Network (CNN) and Ferghana.ru for promoting extremism, of news websites, social media and search platforms, such as Facebook, *Vkontakte*, YouTube and Twitter, and of mobile and texting services to prevent, inter alia, the dissemination of critical statements about the President or his family;

and (f) the written official approval required for any book that is brought into or taken out of the country.

22. Please respond to reports of harassment of independent journalists and media workers for critically reporting on State policies and on other matters of public interest, including through intimidation, the use of civil defamation suits and the imposition of disproportionate sanctions as a result, and prosecutions on allegedly trumped-up charges, including fraud, extortion and extremism. Please report on the measures taken to address the lack of independence of the broadcasting and licensing authority, the State Committee for Television and Radio Broadcasting. Please provide information about the powers given to the Prosecutor General or the body authorized to regulate registration under the 2016 amendments to the Periodical Press and Other Media Act (2013) to request from a court an order to suspend the activities of a mass media outlet.

23. Please report on the measures taken to revise the restrictions on the exercise of freedom of peaceful assembly, including those set out in the Public Meetings, Demonstrations and Rallies Act (2014): (a) prior authorization required for holding assemblies (15 days' advance notice); (b) limitation of assemblies to certain areas and hours of the day; (c) the ban on night protests; (d) the ban on persons with a record of certain administrative offences from organizing assemblies; and (e) restriction on foreign nationals from participating in assemblies.

Freedom of association and participation in public affairs (arts. 22, 25 and 27)

24. With reference to the State party's report (CCPR/C/TJK/3, para. 98), please report on the content of the bill amending the Voluntary Associations Act, including on its compatibility with the Covenant, and provide information on the progress of its adoption and on the participation of civil society in this process. Please respond to reports of: (a) pressure on organizations to cease their activities; and (b) undue State interference in the activities of public associations, including through the mandatory and detailed reporting to the Ministry of Justice of foreign funding and property received by non-governmental organizations, and through the use of recurrent tax and labour inspections, reportedly as a tool of intimidation, particularly affecting those organizations working on the issues that are sensitive for the Government, such as human rights. Please also comment on concerns that the amendments to the Act on Fighting Corruption, adopted on 30 May 2017, authorizing the State Agency for Financial Control and Combating Corruption to inspect the financial activities of political parties, international organizations and local public associations and requiring submission of annual corruption risk assessment reports, increase State control over their activities.

25. Please explain the compatibility of the ban on religious and ethnicity-based political parties, introduced by the constitutional amendments of 2016, with the Covenant. Please report on the measures taken to promote political pluralism in practice, including genuine political opposition, and comment on reports of politically motivated harassment of opposition, including: (a) the designation of opposition groups as "extremist" or "terrorist"; (b) the long prison sentences for high-ranking members of the Islamic Renaissance Party of Tajikistan following allegedly unfair and secret trials; and (c) the harassment of exiled opposition activists, including through the use of Interpol red notices to seek their extradition, as well as reprisals against relatives of political dissidents abroad.

26. Please report on the measures taken to provide equal access to public office and respond to reports that family members of the President are appointed to senior government posts. Please respond to concerns that: (a) the Act on Parliamentary Elections, as amended in 2014, is still not fully in accordance with the Covenant and provides, inter alia, for undue restrictions on the right to stand for election owing to unreasonable eligibility requirements related to residency, education, language, criminal records that have not been expunged, and ongoing criminal investigation; (b) the high financial deposit required from candidates may constitute a barrier to candidacy; (c) the Central Commission for Elections and Referenda lacks the required independence from the Government; and (d) the overlapping jurisdiction of courts and elections commissions regarding election complaints, including unclear complaints and appeals procedures. Please also respond to the following allegations of irregularities during the parliamentary elections of 2015, and provide information on the

steps taken to prevent such violations in future elections: the lack of a permanent register of voters at central or subnational levels, multiple and proxy voting and lack of safeguards against multiple voting; the limited number of polling stations abroad that effectively restricts the opportunity of non-resident nationals to vote; restricted and unequal electoral campaigns for all candidates, arbitrary interpretation of the rules on campaigning and limited access to State-run television for opposition parties; and harassment of the opposition and pressure on voters. Please clarify whether measures have been taken to review existing legal provisions denying the right to vote to any person declared incompetent by a court or serving a prison sentence, regardless of the severity of the crime.

27. In reference to the previous concluding observations (para. 22), please report on the measures taken to promote the participation of ethnic minorities in political life and the progress achieved in increasing their representation in political bodies and decision-making positions, particularly in the parliament (the *Majilis*). Please respond to concerns that the language test for prospective candidates could hamper the nomination of national minority candidates, and that few such candidates were nominated in the parliamentary elections of 2015.